

AMENDED IN SENATE FEBRUARY 6, 2006
AMENDED IN ASSEMBLY JANUARY 4, 2006
AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 790

Introduced by Assembly Member Yee

February 18, 2005

An act to amend Section 10177 of the Business and Professions Code, relating to real estate licensees.

LEGISLATIVE COUNSEL'S DIGEST

AB 790, as amended, Yee. Real estate licensees.

Existing law, the Real Estate Law, provides for the licensing and regulation of real estate licensees by the Real Estate Commissioner, and makes a willful violation of the law a crime. Existing law authorizes the commissioner to suspend, revoke, or deny a license to a person who commits certain acts, including the willful use of specified terms, including “realtor,” without authority to do so.

This bill would also prohibit a person from ~~willfully using certain designations or certifications awarded by any organization of real estate licensees without authority to do so~~ *knowingly authorizing, directing, conniving at, or aiding in the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her designation or certification of special education, credential, or trade organization membership.*

Because a willful violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that the
2 public interest is served by protecting the validity and distinction
3 of private sector special practice designations against
4 unauthorized use, especially in the following areas:

5 (a) Real estate sales lease and exchange practice described in
6 subdivisions (a) and (c) of Section 10131 of the Business and
7 Professions Code.

8 (b) Mortgage finance practice described in subdivisions (d) and
9 (e) of Section 10131 of the Business and Professions Code.

10 (c) Real estate rental and management-related activities
11 described in subdivision (b) of Section 10131 of the Business and
12 Professions Code.

13 SEC. 2. Section 10177 of the Business and Professions Code
14 is amended to read:

15 10177. The commissioner may suspend or revoke the license
16 of a real estate licensee, or may deny the issuance of a license to
17 an applicant, who has done any of the following, or may suspend
18 or revoke the license of a corporation, or deny the issuance of a
19 license to a corporation, if an officer, director, or person owning
20 or controlling 10 percent or more of the corporation's stock has
21 done any of the following:

22 (a) Procured, or attempted to procure, a real estate license or
23 license renewal, for himself or herself or any salesperson, by
24 fraud, misrepresentation, or deceit, or by making any material
25 misstatement of fact in an application for a real estate license,
26 license renewal, or reinstatement.

27 (b) Entered a plea of guilty or nolo contendere to, or been
28 found guilty of, or been convicted of, a felony or a crime
29 involving moral turpitude, and the time for appeal has elapsed or

1 the judgment of conviction has been affirmed on appeal,
2 irrespective of an order granting probation following that
3 conviction, suspending the imposition of sentence, or of a
4 subsequent order under Section 1203.4 of the Penal Code
5 allowing that licensee to withdraw his or her plea of guilty and to
6 enter a plea of not guilty, or dismissing the accusation or
7 information.

8 (c) Knowingly authorized, directed, connived at, or aided in
9 the publication, advertisement, distribution, or circulation of any
10 material false statement or representation concerning his or her
11 *designation or certification of special education, credential,*
12 *trade organization membership, or business, or concerning any*
13 *business opportunity or any land or subdivision (as defined in*
14 *Chapter 1 (commencing with Section 11000) of Part 2) offered*
15 *for sale.*

16 (d) Willfully disregarded or violated the Real Estate Law (Part
17 1 (commencing with Section 10000)) or Chapter 1 (commencing
18 with Section 11000) of Part 2 or the rules and regulations of the
19 commissioner for the administration and enforcement of the Real
20 Estate Law and Chapter 1 (commencing with Section 11000) of
21 Part 2.

22 (e) ~~(1)~~ Willfully used the term “realtor” or any trade name or
23 insignia of membership in any real estate organization of which
24 the licensee is not a member.

25 ~~(2) Willfully used or claimed without authority a designation or~~
26 ~~certification of special education, practice, or skill awarded by~~
27 ~~any organization of real estate licensees, or willfully held out to~~
28 ~~the public a confusingly similar designation or certification.~~

29 (f) Acted or conducted himself or herself in a manner that
30 would have warranted the denial of his or her application for a
31 real estate license, or has either had a license denied or had a
32 license issued by another agency of this state, another state, or
33 the federal government revoked or suspended for acts that, if
34 done by a real estate licensee, would be grounds for the
35 suspension or revocation of a California real estate license, if the
36 action of denial, revocation, or suspension by the other agency or
37 entity was taken only after giving the licensee or applicant fair
38 notice of the charges, an opportunity for a hearing, and other due
39 process protections comparable to the Administrative Procedure
40 Act (Chapter 3.5 (commencing with Section 11340), Chapter 4

1 (commencing with Section 11370), and Chapter 5 (commencing
2 with Section 11500) of Part 1 of Division 3 of Title 2 of the
3 Government Code), and only upon an express finding of a
4 violation of law by the agency or entity.

5 (g) Demonstrated negligence or incompetence in performing
6 any act for which he or she is required to hold a license.

7 (h) As a broker licensee, failed to exercise reasonable
8 supervision over the activities of his or her salespersons, or, as
9 the officer designated by a corporate broker licensee, failed to
10 exercise reasonable supervision and control of the activities of
11 the corporation for which a real estate license is required.

12 (i) Has used his or her employment by a governmental agency
13 in a capacity giving access to records, other than public records,
14 in a manner that violates the confidential nature of the records.

15 (j) Engaged in any other conduct, whether of the same or a
16 different character than specified in this section, which
17 constitutes fraud or dishonest dealing.

18 (k) Violated any of the terms, conditions, restrictions, and
19 limitations contained in any order granting a restricted license.

20 (l) Solicited or induced the sale, lease, or listing for sale or
21 lease of residential property on the ground, wholly or in part, of
22 loss of value, increase in crime, or decline of the quality of the
23 schools due to the present or prospective entry into the
24 neighborhood of a person or persons of another race, color,
25 religion, ancestry, or national origin.

26 (m) Violated the Franchise Investment Law (Division 5
27 (commencing with Section 31000) of Title 4 of the Corporations
28 Code) or regulations of the Commissioner of Corporations
29 pertaining thereto.

30 (n) Violated the Corporate Securities Law of 1968 (Division 1
31 (commencing with Section 25000) of Title 4 of the Corporations
32 Code) or the regulations of the Commissioner of Corporations
33 pertaining thereto.

34 (o) Failed to disclose to the buyer of real property, in a
35 transaction in which the licensee is an agent for the buyer, the
36 nature and extent of a licensee's direct or indirect ownership
37 interest in that real property. The direct or indirect ownership
38 interest in the property by a person related to the licensee by
39 blood or marriage, by an entity in which the licensee has an

1 ownership interest, or by any other person with whom the
2 licensee has a special relationship shall be disclosed to the buyer.

3 (p) Violated Article 6 (commencing with Section 10237).

4 If a real estate broker that is a corporation has not done any of
5 the foregoing acts, either directly or through its employees,
6 agents, officers, directors, or persons owning or controlling 10
7 percent or more of the corporation's stock, the commissioner
8 may not deny the issuance of a real estate license to, or suspend
9 or revoke the real estate license of, the corporation, provided that
10 any offending officer, director, or stockholder, who has done any
11 of the foregoing acts individually and not on behalf of the
12 corporation, has been completely disassociated from any
13 affiliation or ownership in the corporation.

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the
19 penalty for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition of a
21 crime within the meaning of Section 6 of Article XIII B of the
22 California Constitution.